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No.

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IN THE

Supreme Court of the United States

October Term, 1981

JOHN G. TODD, M.D.,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

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QUESTIONS PRESENTED

I. WHETHER OR NOT A DISTRICT COURT ORDER SUBSEQUENTLY AFFIRMED BY A COURT OF APPEALS DENYING INJUNCTIVE RELIEF WITHOUT BENEFIT OF HEARING CONSTITUTES A DENIAL OF DUE PROCESS OF LAW AND A DENIAL OF EQUAL PROTECTION OF THE LAWS?

II. WHETHER OR NOT A COURT OF APPEALS HAS JURISDICTION TO REVIEW AN ORDER HAVING INTERLOCUTORY EFFECT?

III. WHETHER OR NOT PHYSICIANS, DULY LICENSED TO ENGAGE IN THE PRACTICE OF MEDICINE, MAY PROPERLY INVOKE RIGHTS UNDER THE FOURTH AND FIFTH AMENDMENTS OF THE UNITED STATES CONSTITUTION THEREBY PRECLUDING UNREASONABLE SEARCHES AND ILLEGAL SEIZURES IN AND ABOUT THEIR OFFICE WORKING PLACE?

IV. WHETHER OR NOT A PHYSICIAN WHO IS DULY LICENSED TO ENGAGE IN THE PRACTICE OF MEDICINE AND WHO HOLDS A DRUG ENFORCEMENT ADMINISTRATION LICENSE, AUTHORIZING THE DISPENSING OR DISTRIBUTION OF CONTROLLED SUBSTANCES, MAY BECOME THE PROPER SUBJECT OF CRIMINAL PROSECUTION UNDER 21 U.S.C. § 841 (Controlled Substance Act) WHERE HE OR SHE IS ENGAGED IN THE

LAWFUL COURSE OF HIS OR HER PROFESSIONAL PRACTICE AND WHERE THERE IS REASON TO BELIEVE THAT THE DISPENSING OR DISTRIBUTION OF ANY CONTROLLED SUBSTANCE IS AN ADJUNCT TO THE COURSE OF MAINTENANCE OR DETOXIFICATION TREATMENT OF AN INDIVIDUAL (PATIENT)?

V. WHETHER OR NOT AN ORDER ISSUED, UNDER THREAT OF IMMEDIATE INCARCERATION WITHOUT BENEFIT OF BOND, TO A PHYSICIAN DIRECTING HIM TO APPEAR BEFORE A GRAND JURY TO GIVE HANDWRITING EXEMPLARS CONSTITUTES VIOLATION OF HIS RIGHTS AGAINST SELF INCRIMINATION AND DENIAL OF EQUAL PROTECTION OF THE LAWS?

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No.

JOHN G. TODD, M.D.,
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THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT.

Petitioner, John G. Todd, M.D., petitions this Court for a Writ of Certiorari to Review the Judgment of the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

Petitioner, John G. Todd, M.D. is a practicing physician and was duly licensed to engage in the practice of medicine in the District of Columbia. Petitioner was granted a Drug Enforcement Administration License.

That license was current at the time of the alleged incidents complained of by the United States of America.

On September 9, 1980, or thereabout, a Search Warrant was issued authorizing the search of the medical offices of the Petitioner. That Search Warrant was issued on the strength of an affidavit executed by one Detective Melvin Cannon, a member of the Narcotic Branch of the Metropolitan Police Department. Immediately prior thereto, Petitioner became the target of a Grand Jury Investigation based upon what was believed to be violations of the Controlled Substance Act, *Chapter 13, 21 U.S.C. § 801, et seq.*

OPINIONS

1. On September 10, 1980, the United States Magistrate issued and authorized issuance of a Search Warrant authorizing search of the Petitioner's Medical Offices situated at #8 Rhode Island Avenue, N.W. (*Appendix A*).

2. On January 16, 1981, Petitioner filed a "Petition to Enjoin Grand Jury Proceedings, Criminal Prosecution and to Quash Subpoena Issued".

Appendix B. In his Petition, Petitioner alleged that an invitation of a forced appearance to appear before a Grand Jury to give handwriting exemplars would constitute a denial of due process; violate his rights under the Fifth Amendment; constitute a denial of equal protection of the law, and would constitute an unlawful invasion and intrusion into his private practice and his medical offices. Petitioner prayed for an Order quashing the subpoena commanding him to appear before the Grand Jury; a Temporary Restraining Order; a Preliminary Injunction, and a Permanent Injunction enjoining prosecution or

Grand Jury action based upon alleged violations of *21 U.S.C. § 841* (Controlled Substance Act). The action was filed as a Miscellaneous action, non-criminal in nature.

3. On January 26, 1981, without considering a Motion for Temporary Restraining Order; without considering the Motion for Preliminary Injunction; and without affording a full hearing on the Petition to Enjoin, the Federal District Court denied all relief, by fiat. The District Court's ruling was simply marked on the face of the original Petition as follows:

"Denied. January 26, 1981.
x/W Bryant"

Appendix B

4. On January 30, 1981, the Grand Jury Foreman issued an Order directing Petitioner to appear before the 80-12 Grand Jury. (*Appendix C*).

5. Petitioner failed to appear. On February 3, 1981, Respondent filed a Motion for Order to Show Cause.

6. On February 6, 1981, Petitioner filed an Opposition to Motion for Order to Show Cause and filed a Cross Motion for Order Discharging Order to Show Cause.

7. On February 4, 1981, the District Court entered an Order, based upon Respondent's Motion, ex parte, albeit contested, directing Petitioner to appear before the Court on February 9, 1981 (*Exhibit D*).

8. On February 11, 1981, Petitioner, with Counsel, appeared before the District Court in response to the Order to Show Cause. The District Court ordered Petitioner to appear before the Grand Jury or otherwise suffer incarceration. The Court's Order and direction was as follows:

"I will tell you what I will do. I will finish this hearing, and at 2:00 o'clock you come back here with this man. And if he refuses to give exemplars, I'm going to jail him. I'm not going to set any appeal bond or anything else. I'm going to jail him."

(Appendix E, pp. 9).

9. On February 11, 1981, the Court entered a formal Order finding, inter alia, that the issuance of the handwriting directive by the Grand Jury was reasonable under the guidelines established by the Fourth Amendment, and that Petitioner had no basis within the Fifth Amendment to refuse to comply with the Grand Jury's directive. (*Appendix F*).

10. Petitioner filed an Appeal to the United States Court of Appeals for the District of Columbia Circuit.

11. On March 27, 1981, the United States Court of Appeals for the District of Columbia Circuit entered an Order directing Appellant and Counsel to show cause why the appeal should not be dismissed for lack of appellate jurisdiction. (*Appendix G*).

12. On May 1, 1981, in a Per Curiam opinion, the United States Court of Appeals dismissed the appeal and ruled as follows:

"Since appellant has made no showing that this Court has jurisdiction to review his appeal from the interlocutory order, no judgment of conviction having been entered, and since, in any event appellant complied with the district court's order two days before noticing his appeal here, it is,

ORDERED, by the Court that the appeal is dismissed."

(Appendix H)

13. Petitioner filed a Petition for rehearing and Suggestion for rehearing en banc on May 7, 1981.

14. On May 28, 1981, the United States Court of Appeals for the District of Columbia Circuit denied Petitioner's suggestion for rehearing en banc. (*Appendix J*).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1234(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Sec. 10, clause 1, U.S. Constitution.

Fourth Amendment, United States Constitution.

Fifth Amendment, United States Constitution.

Fourteenth Amendment, United States Constitution.

FEDERAL STATUTES INVOLVED

28 U.S.C. § 1292(a)(1), provides as follows:

"(a) The Court of Appeals shall have jurisdiction of appeals from:

(1) Interlocutory orders of the district courts of the United States ******** granting, continuing, modifying, refusing, or dissolving injunctions. ********"

21 U.S.C. § 827(c)(1)(A) provides as follows:

> The foregoing provisions of this section shall not apply –
>
> "**** With respect to any narcotic controlled substance in schedule II, III, IV, or V, to the prescribing or administering of such substance by a practitioner in the lawful course of his professional practice unless such substance was prescribed or administered in the course of maintenance treatment or detoxification treatment of an individual."

21 U.S.C. § 802(20), provides as follows:

> "The term 'practitioner' means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices or does research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research."

21 U.S.C. § 841(a), provides as follows:

> "Unlawful Acts.
>
> Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally –
>
> (1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance;"

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance."

STATEMENT OF THE CASE

This case originated in the United States District Court on January 16, 1981, when Petitioner filed a Civil Action seeking a Temporary Restraining Order, a Preliminary Injunction and a Permanent Injunction enjoining the Respondent from pursuing a Grand Jury Investigation before which Petitioner, a physician, was directed as it's target. As part of that investigation, Respondent sought to have Petitioner produce copies of handwriting exemplars in aid of it's investigation to determine whether or not Petitioner had engaged in acts violative of *21 U.S.C. § 841(a)*, of the Controlled Substance Act.

On January 26, 1981, the U.S. District Court Judge, without affording hearing on the Motion for Temporary Restraining Order, or the Motion for Preliminary Injunction and a Permanent Injunction, entered a fiat, "Denied". (*App. H*) On January 26, 1981, the Grand Jury Foreman issued a Directive commanding Petitioner to appear before the 80-12 Grand Jury. Petitioner refused to do so, properly invoking his rights under the Fourth and Fifth Amendments of the U.S. Constitution.

On February 3, 1981, the Respondent filed a Motion for Order to Show Cause why the Petitioner should not be held in Contempt for failing to appear. The District Court issued an Order to Show Cause and on February 11, 1981, Petitioner, with Counsel, appeared before the District Court in response to that Order to

Show Cause. After a summary hearing, the District Court Judge issued an unequivocal mandate and order compelling Petitioner to appear before the Grand Jury to give handwriting exemplars. In the event he failed to appear, said the District Judge, Petitioner would be jailed without benefit of bond or "anything else". Labouring under the fear of a jail sentence, without benefit of bond, Petitioner gave handwriting exemplars.

Petitioner thereafter filed a Notice of Appeal to the United States Court of Appeals for the District of Columbia Circuit. That Court issued an Order to Show Cause why the Appeal should not be dismissed for lack of appellate jurisdiction. On May 1, 1981, in a Per Curiam Opinion, the Court of Appeals dismissed the Appeal. That Court ruled that it had no jurisdiction over an interlocutory appeal for the reason that no judgment of conviction had been entered and appellant had complied with the District Court's order by giving those handwriting exemplars. (Appendix H).[1] Finally, in response to the Petition for Reconsideration and Suggestion for rehearing en banc, the Court of Appeals entered denial orders on May 28, 1981.

[1]The Court of Appeals failed to address itself to the effectiveness or legality of the District Court Order denying the Petition for Injunctive Orders. It treated the matter of appeal as one criminal in nature, when in fact the entire litigation remained in a Civil Posture. The Court's ruling was premised upon the misconception that since there was no conviction the order was not appealable.

STATEMENT OF FACTS

This case involves an attempt by the United States of America to obtain information leading to Grand Jury Indictment of a medical doctor for actions, which the United States describes, are violative of the Controlled Substance Act. The Respondent, the United States of America, charges that the physician has violated *21 U.S.C. § 841(a).* As part of it's investigation before the 80-12 Grand Jury, and based upon a sworn affidavit of an undercover agent of the Metropolitan Police Department, the Respondent caused to be issued a Search Warrant authorizing search of the medical offices of the Petitioner, the physician named herein. On the 9th day of September, 1980, that Search Warrant was issued. Prior to the September 9th Search Warrant, an undercover agent, posing as various persons, and more particularly, by using fraudulent identities, encouraged, induced, pressed, enticed and sought "black beauties" from Petitioner. The detailed facts are as follows:

1. On July 2, 1980, an undercover officer, hereinafter referred to as U/C, entered the office of Dr. John G. Todd for a previously made appointment in the name of Tasha Johnson. U/C is 5'5 tall and weighed 114 lbs., at the time she first went to Dr. Todd – U/C was seen immediately by the doctor who asked what did she want. U/C replied that she wanted a prescription for Fastin.[2]

[2]Fastin is a Schedule IV controlled substance. According to the 1980 Physician's Desk Reference Fastin has a pharmacologic activity similar to amphetamines. Fastin is indicated in the management of exogenous obesity as a short-term adjunct in a regimen of weight reduction based on caloric restriction.

Dr. Todd wrote a prescription for thirty (30) Fastin tablets to be taken one a day. U/C Paid Dr. Todd $10.00 in advance Metropolitan Department Funds and left the office. At no time did U/C receive any type of physical examination.

2. On July 7, 1980, U/C returned to Dr. Todd's office and again received a prescription in the name of Tasha Johnson for thirty (30) tablets of Fastin to be taken one a day. On July 10, 1980, U/C returned to Dr. Todd's office and this time received a prescription for thirty (30) tablets of Tepanil to be taken one a day.[3] And on July 17, 1980, U/C received from Dr. Todd a prescription for Tenuate,[4] thirty (30) tablets, to be taken one a day after Dr. Todd indicated that he could not write her a prescription for "Black Beauties" (Biphetamine) as she had requested.

3. On July 22, 1980, U/C went to the offices of Dr. Todd located on the first floor of #8 Rhode Island Avenue, N.W. and met with the doctor about ten (10) minutes after she arrived. U/C asked Dr. Todd for a stronger diet pill and the doctor told her he could give her Sanorex[5] which was a little stronger that the others. Dr. Todd then wrote U/C a prescription in the name of Tasha Johnson for thirty (30) Sanorex tablets.

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[3]Teparil is a Schedule IV controlled substance which according to the 1980 Physician's Desk Reference has aspharacologic activity similar to the amphetamines. The uses of Tepanil are similar to those of Fastin.

[4]Tenuate is a Schedule IV controlled substance which according to the 1980 Physician's Desk Reference is similar in activity and use to Fastin and Tepanil.

[5]Sanorex is a Schedule II controlled substance which according to the Physician's Desk Reference has a similar activity and use to the other drugs which U/C received.

4. Two days later on July 24, 1980 U/C returned to the doctor's office and waited about five minutes until she saw the doctor. U.C. asked the doctor for a prescription for Eskatrol (a Schedule II amphetamine). U/C then asked for and Dr. Todd agreed to write a prescription for something that he had already prescribed her. U/C asked that the prescription be written for Tepanil, Dr. Todd wrote and gave to U/C a prescription for thirty (30) Tepanil.

5. On July 29, 1980, U/C returned to Dr. Todd's office. After U/C entered the doctor's office, the doctor took four (4) bottles, marked 'Sanorex" and gave them to U/C telling her that the pills would take the place of a prescription. U/C gave Dr. Todd $35.00 and left the office.

6. On August 13, 1980, U/C went to Dr. Todd's office and saw him immediately. U/C told Dr. Todd that she wanted another prescription. U/C asked Dr. Todd for something he had in his office and he gave her four (4) packets, of Ionamin, 15 mg. and two (2) of Ionamin, 39 mg. Each packet had seven (7) capsules.[6] U/C gave Dr. Todd $35.00 and left the office.

7. On September 9, 1980, U/C returned to Dr. Todd's office. U/C told Dr. Todd that she needed medicine but she did not want a prescription. Dr. Todd went into a drawer and retrieved 4 packets of Ionamin which he gave to her. U/C was able to see other medication in the drawer from which Dr. Todd took the Ionamin he gave her.

U/C paid Dr. Todd with $20.00 of marked currency, which she saw him put in his pocket.

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[6]Ionamin is a Schedule IV controlled substance with activity and use similar to the other drugs received by U/C.

The Respondent alleged that the Petitioner was and is licensed "to prescribe and dispense controlled substances only in the usual course of professional practice for a legitimate medical reason."

It is upon the foregoing facts that the Respondent seeks an Indictment.

SUMMARY OF ARGUMENT

I. The denial of Petition for Injunction, by fiat, thereby precluding hearings on Motions for Temporary Restraining Order and Preliminary Injunction and Final Hearing on the Merits, constituted a denial of procedural due process of law and denial of equal protection of the laws.

II. The denial of Petition for Review on Appeal due to lack of appellate Court jurisdiction erroneously premised upon lack of conviction of a physician in a Civil case constitutes further denial of procedural due process of law and equal protection of the laws.

III. The Controlled Substance Act, *21 U.S.C. § 801, et. seq.*, and more particularly, Section 841(a), is, as to physicians and other medical personnel, an *ex post facto* law and is therefore unconstitutional as violative of Article I, Section 10, Clause 1, of the United States Constitution.

IV. A physician who is authorized to prescribe controlled substances by virtue of a license to do so may properly invoke his rights under the Fourth and Fifth Amendment of the U.S. Constitution which ordains that he shall be constitutionally free from illegal searches and seizures and self-incrimination.

REASONS FOR GRANTING THE WRIT

The case now before the Court is one which necessarily affects the rights of physicians, dentists, veterinarians, scientific investigators, pharmacies, hospitals and all other persons licensed to dispense controlled substances. *21 U.S.C. § 841, et seq.* In this regard, the ultimate question is whether physicians, and others similarly situated, are properly immune from prosecution for violation of Section 841(a) of the Act where the Attorney General has registered those physicians to dispense drugs for narcotic treatment or for other legitimate medical pursuits within the bounds of their professional judgment. *21 U.S.C. § 823(q).* Similarly, physicians, or others similarly situated, who possess licenses to distribute controlled substances are not engaged in unlawful conduct and are therefore immune from prosecution under section 841(a) of the Controlled Substance Act.

I

DENIAL OF PETITION FOR INJUNCTIVE RELIEF WITHOUT BENEFIT OF HEARINGS ON MOTIONS FOR TEMPORARY RESTRAINING ORDERS, PRELIMINARY INJUNCTIONS, AND PERMANENT INJUNCTION CONSTITUTES A DENIAL OF DUE PROCESS OF LAW AND DENIAL OF EQUAL PROTECTION OF THE LAWS.

In this case, Petitioner, a medical doctor, filed an original Petition seeking to enjoin Grand Jury Investigation and possible Criminal Prosecution for Respondent believed to be acts violative of the Controlled Substance Act. *21 U.S.C. § 801, et seq.* The District Court, by fiat, denied all relief without benefit of a Hearing on any of the

Motions and the Complaint. See *Appendix H.* On Appeal, the United States Court of Appeals for the District of Columbia Circuit, dismissed the Appeal.

Certiorari should be granted in the pending cause for the reason that this Court must clearly enunciate Judicial Protocol in processing original complaints where a party seeks an injunctive order. Inferior Courts cannot, constitutionally, deny that right by fiat. The Petition filed by Petitioner was one equitable in nature. Consequently, the thrust of his argument here is not one alleging violation of Seventh Amendment Rights (right to Trial by Jury). No demand for jury trial was made by petitioner because of his equitable claims. On the other hand, *Rule 39(b), F.R. Civ. P.* placed the onus upon the Trial Court to schedule a jury trial where issues are such that a demand could have been made within the appropriate time frame under the rules. There are certain issues which could have been tried to the Court and other issues to which the Court could have scheduled a trial by jury. *Enelow v. New York Life Ins. Co. 293 U.S. 379, 55 S. Ct. 310 (1935); Ettelson v. Metropolitan Life Ins. Co. 317 U.S. 188, 63 S. Ct. 163 (1942).*

Where the Court of Appeals rejects appellate jurisdiction rather than appealability or nonappealability of an interlocutory order, preclusion to full hearing on the merits was constitutionally unjustified. A Court of Appeals almost always has jurisdiction to review Trial Court action even in cases where orders are not normally appealable. The permissive appeal noted in *28 U.S.C. § 1292, et seq.* is a prime example. Nonetheless, Petitioner contends that the Court of Appeals did indeed have jurisdiction since his appeal was guaranteed as a matter of right under *28 U.S.C. § 1292.* Moreover, even assuming that the Trial

Court's Order be construed as a Temporary Restraining Order or failure of entry of such an order, and no preliminary injunctive had issued, the fiat, "denied", which was noted on the original petition must be treated as a denial of Motion for Preliminary Injunction and it was therefore appealable.

II

THE CONTROLLED SUBSTANCE ACT, 21 U.S.C. 801, et seq., IS, TO PHYSICIANS AND OTHER MEDICAL PERSONNEL, AND EX POST FACTO LAW AND IS THEREFORE UNCONSTITUTIONAL AS VIOLATIVE OF ARTICLE I, SECTION 10, OF THE UNITED STATES CONSTITUTION.

The Court is invited to consider the legality and constitutionality of the Controlled Substance Act, *21 U.S.C. § 801, et seq.* as an Ex Post Facto Law. Petitioner contends that the Controlled Substance Act, insofar as it relates to physicians and other profesionals engaged in the Healing Arts profession who have the right, by virtue of licensure to engage in the practice of medicine, to dispense and distribute controlled substances, is an ex post facto law and is therefore repugnant to Article I, Section 10, Clause 1, of the United States Constitution. The criminality expressed within the Act is found in *Section 841,* of the Controlled Substance Act. That Section provides as follows:

> "Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally –

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance."

But the Court must look to the history and evolution or the Genesis, if you will, of the Controlled Substance Act in order to determine whether or not officially sanctioned and acceptable medical arts practice is indeed within the scope of international and domestic narcotic traffic or dealing in controlled substances. In 1970, Congress enacted the Controlled Substance *Act. Pub. L. 91-513, title II* #101, October 27, 1970, 84 Stat. 1242. In enacting the Controlled Substance Act, Congress made the following findings:

"801. *Congressional findings and declarations.*

The Congress makes the following findings and declarations:

(1) Many of the drugs included within this subchapter have a useful and legitimate medical purpose and are necessary to maintain the health and general welfare of the American people.

(2) The illegal importation, manufacture, distribution and possession and improper use of controlled substances have a substantial and detrimental effect on the health and general welfare of the American People.

(3) ********

(4) Local distribution and possession of con-

trolled substances contribute to swelling the interstate traffic in such substances.

(5) ********

(6) Federal control of the interstate incidents of the traffic in controlled substances is essential to the effective control of the interstate incidents of such traffic.

(7) The United States is a party to the Single Convention on Narcotic Drugs, 1961, and other international conventions designed to establish effective control over international and domestic traffic in controlled substances."

21 U.S.C. § 801

Under another section of the Controlled Substance Act, Congress defined "practitioner" to include such groups as follows:

"(20) The term 'practitioner' means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted, by the United States of the jurisdiction in which he practices or does research, to distribute, dispense, conduct research, with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research."

21 U.S.C. 802(20)

Yet, under another provision of the Controlled Substance Act, Congress enacted the following penal provisions:

"Prohibited acts A

(a) *Unlawful acts*

Except as authorized by this subchapter, it shall be unlawful for any person knowingly or intentionally –

(1) to manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance; or

(2) to create, distribute, or dispense, or possess with intent to distribute or dispense, a counterfeit substance."

Petitioner, a licensed medical practitioner, became the target of a Grand Jury Investigation determinative of whether or not he was engaged in the distribution of a controlled substance violative of *Section 841, supra.*

Physicians and other medical persons have long since been granted licensure to distribute and dispense controlled substances which, according to the American Medical Association, is one of the incidents of a sound and legitimate medical practice. Prior to the enactment of the Controlled Substance Act (Oct. 27, 1970), the Council on Mental Health and the National Academy of Sciences – National Research Council, in a joint report on the use of narcotic drugs in medical practice and the medical management of narcotic addicts, made findings and reaffirmations sanctioning the distribution and medical use of narcotics as being outside the aegis of presumed criminal law controls.[7]

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[7]The following summary was disseminated to the entire body of American Medical Association Members, June 1963: 37-48. That summary enunciated the following Medical tenets:

Petitioner contends that a statute which labels as criminal, certain acts which are indicative of the medical state of the arts in the prescribing and dispensing of con-

---

"(1) Laws and regulations controlling narcotic drugs are not intended to interfere with their administration in legitimate medical practice. Such administration is legally and medically sound.

(2) It is a responsibility of the medical community to provide on a current basis a "Code" defining legitimate medical practice. The present report represents a review of such current opinion as will tend to meet this need.

(3) The WHO definition of addiction is adopted for this document but consideration is limited to the opiates, and the natural and synthetic drugs of this class.

(4) *********

(5) It is the duty of the physician to bear these dangers in mind in his administration of narcotics.

(6) *********

(7) *********

(8) *********

(9) The treatment of persons already addicted is a medical responsibility because addiction is recognized to be a medical syndrome which is based on an underlying emotional disorder. This syndrome tends to perpetuate itself and to further aggravate the underlying disorder.

(10) Within the field of medicine, addiction is a problem in psychiatry and in psychopharmacology.

(11) Under adequate precautions (in or out of an institution) and after proper consultation, addicted persons may be supplied with maintenance drugs withdrawal represents a hazard to life. *********

(12) *********

trolled substances as a continuous regimen in their extensional patterns constitutes an *Ex Post Facto* law which is unconstitutional and violative of *Article Section 10, Clause 1 of the Constitution.*

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(13) **********

(14) **********

(15) **********

(16) **********

(17) **********

(18) **********

(19) **********

(20) **********

(21) To promote a better coordination between law enforcement and medical treatment, responsible medical bodies should be developed in each state to collaborate in the investigation of physicians under question concerning alleged irregularities of prescribing or dispensing narcotics. The medical profession recognizes this need and stands ready to cooperate with the Commissioner of the Bureau of Narcotics and appropriate state agencies in such an undertaking.

(22) A need exists for the development of a national body to keep current the standards of ethical medical practice with relation to narcotics and narcotic addicts and to act in an advisory capacity to the Commissioner. The American Medical Association and the National Academy of Sciences – National Research Council stand ready to cooperate with the Bureau of Narcotics in this regard.

(23) **********"

AMA Summary, June 1963: 37-48
Cf. American Medical Association, Digest of Official Actions 1959-1963, pp. 205-207.

If the Court would compare statutes which change the degree of criminal sentences and which have been declared by this Court to be unconstitutional,[8] with the Controlled Substance Act, *21 U.S.C. 801, et seq.* which renders a physician's conduct in prescribing controlled substances as being criminal and subject him to criminal punishment, a finding of similar constitutionality or unconstitutionality is exceedingly clear. The former cases have all held that statutes which change punishment are clearly *ex post facto* laws and therefore unconstitutional.

Finally, the controls over the private practice of a physician in dispensing or distributing controlled substances within the course of his medical practice are not such as to occasion the invasion by legal interference. Or more particularly, the invisible *ex post facto* effect, hidden within the four corners of the Controlled Substance Act, supra, cannot be constitutionally ignored.

---

[8]Hawker v. New York, 170 U.S. 189, 190 (1908); Reetz v. Michigan, 188 U.S. 505, 509 (1903); Lehmann v. State Board of Public Accountancy 263 U.S. 394 (1923); DeVeau v. Braisted, 363 U.S. 144, 160 (1960); Cummings v. Missouri 4 Wall 277, 316 (1867); Pierce v. Carskadon, 16 Wall 234 (1873); Lindsey v. Washington, 301 U.S. 397 (1937); Kring v. Missouri, 107 U.S. 221 (1883); Holder v. Minnesota, 137 U.S. 483, 491 (1890).

III

A PHYSICIAN WHO IS AUTHORIZED TO PRESCRIBE CONTROLLED SUBSTANCES BY VIRTUE OF A LICENSE TO DO SO MAY PROPERLY INVOKE RIGHTS UNDER THE FOURTH AND FIFTH AMENDMENTS OF THE U.S. CONSTITUTION WHICH GUARANTEES HIM THE RIGHT TO BE FREE FROM ILLEGAL SEARCHES AND SEIZURES AND AGAINST SELF-INCRIMINATION.

Petitioner was served with a subpoena to appear before a Grand Jury to give handwriting exemplars. He filed an original suit seeking an Injunction and to quash the subpoena. The District Court, instead, denied all relief requested in the original complaint and in supporting Motions, by fiat denial. (*Ex. H*). The Court then ordered Petitioner to appear before the Grand Jury or otherwise face contempt and jail sentence, without the benefit of bond. Labouring under threat of coercion and jail sentence, Petitioner complied, even though reserving his objections. He thereafter appealed to the United States Court of Appeals. That Court held that since Petitioner had not been sentenced and since he had already complied with the Court's Order, the appeal was moot and therefore the Court had no appellate jurisdiction. (*Ex. H*).

Under *Rule 17(c), F. Rules of Crim. P.*, the Court may quash or modify a subpoena if compliance would be unreasonable or oppressive. The unreasonableness or oppressiveness of the subpoena and petitioner's response to the subpoena is clearly delineated under the Fourth and Fifth Amendments of the Constitution. The facts here are therefore clearly outside of the grips of *United States v.*

Dionisio, 410 U.S. 1 (1973); United States v. Mara, 410 U.S. 19 (1973); and United States v. Nix, 465 F.2d 90 (5th Cir.) cert. den. 409 U.S. 1013 (1972).

A physician, during day to day activities of his offices, has the constitutional right to the expectation of privacy, to be guarded against illegal searches and seizures and cannot be compelled to make statements or to submit written documentary which might reasonably incriminate him. Petitioner therefore has the right to challenge, and indeed, has "automatic standing" to contest or oppose the legality of the search of his private medical offices. See *Jones v. United States, 362 U.S. 257 (1960). Rakas v. Illinois 439 U.S. 128 1978); Kataz v. United States 389 U.S. 347 (1967).*

The irony in the entire proceedings in the Court below, and the investigative events immediately preceeding the filing of the original civil action in the District Court, looms clearly. First of all, this Court has long since warned that confessions which are products of illegal police action must be suppressed as was pointed out in *Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, (1966).* To compel a physician to give handwriting exemplars coercively, overriding defense objections, is repugnant to this Court's holding in *Miranda.* Whether or not the use of handwriting exemplars is tantamount to a confession remains to be seen. Nonetheless, the documents containing those handwriting exemplars must be construed as evidence leading to confession oriented evidence gathering. The test for determining the voluntariness of confessions was setforth in *Brown v. Illinois 422 U.S. 590, 603 (1975)* In *Brown,* supra, the Court had this to say:

> "The question whether a confession is the product of a free will . . . . must be answered on the

> facts of each case. No single fact is dispositive . . . The Miranda warnings are an important factor, to be sure, in determining whether the confession is obtained by exploitation of an illegal arrest. ********** The voluntariness of the statement is a threshhold requirement. And the burden of showing admissibility rests, of course, on the prosecution." 422 U.S. at 603-604 (footnotes and citations omitted). See also, *Dunaway v. New York, 442 U.S. 200, 218 (1979).*

Petitioner does not contend that the distinctions developed in property and tort law ought to control his Fourth Amendment rights. To the contrary. What Petitioner does contend is that the inherent evil in invasion of privacy by intrusion into his professional office space does indeed violate his basic constitutional rights regardless of common law property and tort law distinctions.

CONCLUSION

In view of the foregoing points and authorities, the conclusion is inescapable that this Petition presents a case in which the United States Court of Appeals has decided an important question of federal law which has not been, but should be, settled by this Court. Furthermore, the Decision by the United States Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctions such a departure by a lower court, as to call for an exercise of this Court's power of supervision. The overall judicial benefit which would result in this Court's intervention and exercise of supervisory powers would, unquestionably, extend judicial and legal protection to all persons who comprise that group

identified as physicians, dentists, veterinarians, scientific investigators, pharmacies, hospitals, or other persons licensed to engage in the healing arts.

Finally what Petitioner seeks is this Court's review and analysis of the Controlled Substance Act, *21 U.S.C. 801, et seq.* in order to determine whether the Act was enacted to not only control narcotic trafficking but whether the Act gives the United States of America the right to criminally prosecute physicians, dentists, veterinarians, scientific investigators, pharmacies, hospitals and the like for what might be suspected as violative conduct, is constitutionally proper.

Respectfully Submitted,

CLEMENT THEODORE COOPER,
Esquire #2576
918 F Street, N.W. (300-302)
Washington, D.C. 20004
(202)393-3900/393-3901

Attorney for Petitioner

APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

vs.

Docket No.

Case No.

ENTIRE PREMISES OF:
#8 Rhode Island Avenue, N.W., Medical Offices of Dr. John G. Todd, 1st floor, Washington, D.C. and the person of Dr. John G. Todd

RECEIVED
Sep. 10 1980
CLERK U.S.
DISTRICT COURT
DISTRICT OF COLUMBIA

To CHIEF OF POLICE OF ANY AUTHORIZED

Affidavit(s) having been made before me by Det. Melvin Cammon that he has reason to believe that:

on the person of and
on the premises known as

#8 Rhode Island Avenue, N.W., Medical Offices of Dr. John G. Todd, 1st Floor, Washington, D.C. and the person of Dr. John G. Tood.

WASHINGTON in the District of COLUMBIA there is now being concealed certain property, namely controlled substances and other evidence of the illegal distribution of controlled substances, including "marked" currency, which is in violation of *Title 21,* United States Code, Section 841(a).

and as I am satisfied that there is probable cause to believe that the property so described is being concealed

on the person or premises above described and that the foregoing grounds for application for issuance of the search warant exist.

You are hereby commanded to search within a period of 487ss (not to exceed 10 days) the person of place named for the property specified, serving this warrant and making the search in the daytime (6:00 a.m. to 10:00 p.m.) and if the property be found there to seize it, leaving a copy of this warrant and a receipt for the property taken, and prepare a written inventory of the property seized and promptly return this warrant and bring the property before me as required by law.

Dated this day of 09 Sep., 1980

RETURN

I received the attached search warrant On Sept 9, 1980, and have executed it as follows:

On September 9, 1980 at 1715 o'clock M, I searched the person or premises described in the warrant and

I left a copy of the warrant with Dr. John G. Todd (name of person searched or owner of "at the place of search") together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant:

ONE LINED NOTE BOOK CONT. PATIENT VISITS
8 LOOSE PAGES CONT. PATIENT VISITS
ONE BOX FASTIN 30 MG. CAPSULES
6 CAPSULES INDOCIN 25 MG.
3 BOTTLES (18 TABLETS) SANUREX 2 MG.
6 CAPSULES SERAX CAPSULES 30 MG.
6 CAPSULES DARVON WITH A.S.A.

14 CAPSULES IONAMIN 15 MG.
8 TABLETS EQUANIL 400 MG.
(1) Twenty dollar Bill SCN. No. E11656409B

/s/John G. Todd

This inventory was made in the presence of MELVIN CAMMON and RONNIE HAIRSTON. STUART HURRIN PAUL PONZELLI SGT. DEAN HYDE

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

/s/Melvin Cammon

Subscribed and sworn to and returned before me this day of SEP 1980

/s/illegible

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JOHN G. TODD, M.D. 8 Rhode Island Avenue, N.W. Washington, D.C. 20001	)	
Petitioner	)	
vs.	)	Misc. 81-0015
THE UNITED STATES OF AMERICA Washington, D.C.	)	
Respondent	)	FILED JAN 16 1981

PETITION TO ENJOIN GRAND JURY PROCEEDINGS, CRIMINAL PROSECUTION AND TO QUASH SUBPOENA ISSUED.

1. Petitioner is an adult citizen of the United States and is a resident of the District of Columbia. Petitioner is a medical doctor duly licensed to engage in the practice of medicine in the District of Columbia.

2. The Respondent, the United States of America, through the Office of United States Attorney, is charged with the duty of prosecuting alleged offenders of any and all Federal Statutes including, but not limited to, alleged violations of the Controlled Substance Act, Chapter 13, 21 U.S.C. 801, et seq.

3. Jurisdiction of this action is invoked by virtue of 28 U.S.C. 1346(2) which vests the Court with original jurisdiction in any other civil action or claim against the

United States, not exceeding, $10,000 in amount, founded either upon the Constitution, or any act of Congress, or any regulation of an executive department, etc.

HISTORY OF PROPOSED PENDING CRIMINAL LITIGATION

4. At all times hereinafter mentioned, the United States of America, through the Office of the United States Attorney, acting under authority delegated to him by the.....(illegible).....

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE POSSIBLE VIOLATIONS OF	:	
	:	Misc. No.
21 U.S. CODE § 841(a)	:	

ORDER

This matter having come before the 80-12 Grand Jury and the Grand Jury having heard testimony thereon, it is this 21st day of January, 1981;

ORDERED, by the 80-12 Grand Jury that true and undisguised exemplars of handwriting be given by Dr. John Todd to a representative of the Metropolitan Police Department, in the offices of the United States Attorney, United States Courthouse, Room 4401, the 30th day of January, 1981 at 9:45.

/s/
(Deputy) FOREMAN
August, 1980 Grand Jury in and
for the District of Columbia

APPENDIX D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE POSSIBLE VIOLATIONS OF TITLE 21 U.S. CODE § 841(a)	:	Misc. No. 81-0015
John G. Todd, Witness	:	

FILED
FEB 4 1981
JAMES F. DAVEY, Clerk

ORDER

Based on motion of the United States, it is this 4 day of February, 1981,

ORDERED that Dr. John Todd appear before this Court on the 9th day of February 1981 at 9:30 a.m. to show cause why he should not be held in contempt for failing to comply with the grand jury's handwriting directive served upon him on the 21st day of January, 1981.

/s/William B. Bryant
WILLIAM B. BRYANT, Chief Judge
United States District Court

APPENDIX E

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

IN RE: : MISC. No. 81-0015

JOHN G. TODD, WITNESS :

WASHINGTON, D.C.
FEBRUARY 11, 1981

The above-entitled matter came on before the honorable William B. Bryant, United States District Court Chief Judge.

Appearances:

Lawrence Barcella

For the Government

Clement T. Cooper

For the Witness Todd

Volume; I

Pages; 1-10

Phyllis Merana
Official Reporter
U.S. Courthouse
Washington, D.C.
426-7343

PROCEEDINGS

The deputy Clerk: Miscellaneous number 81-0015, IN RE: John G. Todd, witness. Counsel, Mr. Barcella and Mr. Cooper.

Mr. Cooper: Good morning, your honor. My name is Clement T. Cooper. I represent Dr. John G. Todd.

The defendant is before the Court in response to an order to show cause why he should not be held in contempt for failing to appear before a Grand Jury at the command of the Grand Jury Foreman. The Grand Jury Foreman issued a directive requiring Dr. Todd to appear to give handwriting exemplars. At that time – subsequent to that date, Dr. Todd failed to appear, and the grounds for failing to appear, which were communicated to the United Statesattorney's office – the assistant – were that the doctor would invoke the fourth and fifth amendment rights.

Apparently the United States attorney's office is taking issue with the validity of the invoking of that right.

The Court: Sure they take issue with it. The Supreme Court cases clearly delineate this area. You've got no privilege there. It's not a testimonial matter.

Mr. Cooper: I understand, your honor. I have analyzed the case differently, and I would like to give the court my analysis of it.

Unlike most of the cases which came before the Supreme Court – they did not involve physicians who were duly licensed.

The Court: What difference does it make?

Mr. Cooper: It makes a lot of difference. The difference lies in the fact that the physician, according to his profesional responsibilities –

The Court: Sir.

Mr. Cooper: The physician – first of all, he's granted a dea license to prescribe drugs for people.

The Court: I understand that. It's got nothing to do, Mr. Cooper, with the handwriting exemplars. I fail to see the relationship.

Mr. Cooper: But the relationship is this, your honor. Where the defendant or potential defendant knows that he is the target of a Grand Jury Investigation, then he must at that time invoke his rights.

Now, if this is a physician, we have all of the other collateral problems to go into. Whether or not the physician was exercising his best judgment or whether he was complying with a medical professional responsibility to a so-called "patient", who appeared in his office at the time, and whether or not the writing or a prescription and handing it to that patient was violative of the controlled substance act. Now, if those prescriptions –

The Court: You're getting now into the merits of the charges you anticipate. It has nothing to do with the issue before the court. He's directed to give his handwriting samples. And so far as I know, I don't know of any authority that you can rely on that says you shouldn't do it.

Mr. Cooper: Well, your honor, another point I would like to raise is the in re Dionisio case.

The Court: You mean United States versus Dionisio?

Mr. Cooper: Yes, that relates to the unreasonableness of the Grand Jury subpeona. We apply that to the directive by the Foreman.

In this type of case where you have a violation or alleged violation of the controlled substance act and a physician is involved, obviously the facts which I have related to the court go to the issue of unreasonableness or

reasonableness. And in that respect, where the court must draw an inference to determine at this point whether the command by the Grand Jury Foreman or the directive is reasonable depends upon whether or not we will invoke the Fourth Amendment. Because, obviously, if it's unreasonable and the doctor appears and he has waived his rights under the Fourth Amendment, which prohibits illegal searches and seizures, the ultimate effect of giving la handwriting exemplar is to formulate written documentary evidence. This is the type of evidence which the fourth amendment prohibits in this type of case. That is the reason why we strongly invoked the doctor's rights under the Fourth Amendment, even at a very early stage.

It could be that based upon other interpretations of the Supreme Court cases – and I've read those cases and also some of the various court of appeals cases I find none of those factual patterns in those cases applicable to this case.

I mean, what we have been engaging in is a pronouncement of what courts have held as to whether or not Fourth and Fifth Amendment rights could be invoked. But when we get back to in re Dionisio and we're talking about the reasonableness of the unreasonableness of the Grand Jury Directive, obviously the fact that the doctor has a dea license, that he has a professional responsibility to a patient, that he has in his professional judgment the right to prescribe or not prescribe a particular durg, which is a controlled substance, is left up to his judgment and not to the judgment of the United States of America.

Now, obviously, if there is a clear violation of the act, he would lose the license, but we don't go that far in this argument. All we're saying is these are critical facts which the court must take into consideration in determining the

reasonableness or unreasonableness of the Grand Jury directive commanding Dr. Todd to appear.

My position strongly is that the Grand Jury or the government already has samples of prescriptions. They already know the target of their investigation is Dr. John G. Todd for the alleged violation of the controlled substance act. What is the need for further handwriting exemplars in this case? I see none.

The Court: I don't know. I'm not in the Grand Jury, and I'm not conducting the investigation. But so far as I know, the request that he give a handwriting exemplar is a reasonable one and a valid one, and I don't see that it violates any of his constitutional rights that you make reference to.

If he doesn't give them, I'm going to impose sanctions.

Mr. Cooper: Very well.

The Court: I'll sign an order.

Mr. Cooper: Thank you.

The Court: Do you have the order?

Mr. Barcella: I don't I believe an order might have been submitted with the original motion by Mr. Behr, your honor.

The Court: It wasn't.

Mr. Barcella: It wasn't?

The Court: I don't think so. Wait a second.

Mr. Barcella: The order that he submitted was an order to show cause that the court signed.

The Court: I entered an order on the fourth of February

directing him to appear before the court. This is show cause order form.

Mr. Cooper: Yes, to appear on February 9th.

Mr. Barcella: And then that was continued, I understand, until this morning, your honor.

Mr. Cooper: Until today. Right.

The Deputy Clerk: That's correct.

Mr. Barcella: I don't find one in the jacket Mr. Behr gave me, your honor. I can have an order prepared and up here for the court's consideration within about fifteen or twenty minutes.

The Court: All right.

Mr. Cooper: Thank you, your honor.

The Court: I suggest you keep your client here.

Mr. Cooper: I will, your honor.

The Court: All right.

Mr. Barcella: With the court's permission, your honor, may I be excused?

The Court: Yes.

Mr. Barcella: Thank you.

(11:30 a.m.)

The Deputy Clerk: Come forward, please, Dr. Todd.

The Court: You have a seat, doctor.

Come up here.

(at the Bench.)

Mr. Barcella: Your honor, for the record, counsel has been provided a copy of the order before the court signing it.

Mr. Cooper: I received a copy of the order.

The Court: He's not going to do it?

Mr. Cooper: No, your honor.

The Court: All right.

What is the sanction?

Mr. Barcella: Contempt, your honor. Right now he has been ordered by the court to comply with the directive. If he fails to abide by this court's order, he is in contempt of his Court.

Mr. Cooper: I don't think that the order reads that technically.

The Court: Let me say this to you. Let me tell you something. I don't like to tell counsel this, but this is an area that has been beaten – the path in this area has been thoroughly delineated. There is absolutely no question about this man's responsibility to comply with the subpoena. There is no question about it. Absolutely no question about it.

I'm not engaged in the business of putting people in jail. I don't like to put people in jail for contempt, especially when I believe that it's done on the basis of counsel's advice.

I order him and I hereby direct him to comply with the January 21, 1981 order of Grand Jury 80-12 by reporting immediately to room 4401 of the United States courthouse to produce the requested true and undisguised exemplars of handwriting.

If the Court says to do it, and he doesn't do it, I can hold him in contempt.

Mr. Cooper: I have advised him that if the doesn't abide, he will be held in contempt. I think the defendant has a right to exercise his rights under the fourth and fifth amendments.

I appreciate what the court says about the case law. In this particular situation, I think the facts are quite different.

The Court: All right.

I will tell you what I will do. I will finish this hearing, and at 2:00 o'clock you come back here with this man. And if he refuses to give exemplars, I'm going to jail him. I'm not going to set any appeal bond or anything else. I'm going to jail him.

Mr. Cooper: Your honor, I think we would have a right to request an appeal bond –

The Court: You can do what you want to do, but I'm not going to set any bond for him.

Mr. Cooper: So he can get released.

The Court: If you get him out on bond, you can get it in the court of appeals. You can do that if you want.

All right.

(The above-entitled matter was adjourned.)

CERTIFICATE OR REPORTER

This record is certified by the undersigned reporter of the United States District Court for the District or Columbia to be the official transcript of the proceedings indicated.

Phyllis Merana

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE: POSSIBLE VIOLATIONS OF	:	
21 U.S. CODE, SECTION 841(a)	:	Misc. No.
	:	
JOHN G. TODD, Witness	:	

ORDER

This matter having come before the Court upon the Motion of the United States to show cause why the witness should not be held in contempt and the Court having considered both the written pleadings and oral argument of the parties finds as follows:

1. On January 21, 1981, the witness was served with a Grand Jury directive requiring that he give handwriting exemplars on January 30, 1981;

2. On January 30, 1981, Counsel for the United States was informed by Counsel for Dr. Todd that the Doctor would refuse to comply with the Grand Jury's directive based on a claim of constitutional privilege;

3. On February 4, 1981, this Court issued an Order to Show Cause why the witness should not be held in contempt for failure to comply with the Grand Jury's directive;

4. On February 11, 1981, the Court heard oral argument on the witness' motion and, having heard that and considered the written pleadings it hereby further finds that

5. The issuance of the handwriting directive by the Grand Jury was reasonable under the guidelines established by the Fourth Amendment; and

6. Dr. Todd has no basis within the Fifth Amendment to refuse to comply with the Grand Jury's directive; it is therefore.

ORDERED that the witness, Dr. John Todd, is hereby directed to comply with the January 21, 1981 Order of Grand Jury 80-12 by reporting immediately to Room 4401 of the United States Courthouse to produce the requested true and undisguised exemplars of handwriting to be taken by a representative of the Metropolitan Police Department.

/s/
JUDGE WILLIAM B. BRYANT
Chief Judge
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-1199 **September Term, 1980**

John G. Todd, M.D.,

Appellant

v.

Misc. 81-00015

The United States of America

United States Court of Appeals
for the District of Columbia Circuit

FILED MAR 27 1981

GEORGE A. FISHER
CLERK

Before: McGowan, Chief Judge

ORDER

Counsel for appellant *and* counsel for the appellee are directed no later than 4 p.m. on April 3, 1981 to show cause why this appeal from the district court's order entered February 11, 1981, directing appellant to comply with the "January 21, 1981 Order of Grand Jury 80-12 by reporting immediately to Room 4401 of the United States Court to produce true and undisquished exemplars of handwriting to be taken by a representative of the Metropolitan Police Department" should not be dismissed for lack of appellate jurisdiction.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-1199 **September Term, 1980**

John G. Todd, M.D.,

Appellant

v. **Misc. 81-00015**

The United States of America

United States Court of Appeal
for the District of Columbia Circuit

FILED MAR 27 1981

GEORGE A. FISHER
CLERK

Before: Wright, *Wald, and Ginsburg, Circuit Judges

ORDER

On March 27, 1981, this Court ordered counsel to show cause why this appeal from the district court's order entered February 11, 1981, directing appellant to comply with an order of the grand jury to produce handwriting exemplars should not be dismissed for lack of appellate jurisdiction. We have been advised by the government in its response to the show cause order that appellant produced the exemplars shortly after the district court indicated that refusal to do so would place him in contempt of the district court's order.

Since appellant has made no showing that this Court has jurisdiction to review his appeal from the interlocutory order, no judgment of conviction having been entered, and since, in any event appellant complied with the district court's order two days before noticing his appeal here, it is

ORDERED BY THE Court that the appeal is dismissed.

Per Curiam

*Circuit Judge Wald did not participate in the foregoing order.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-1199 **September Term, 1980**

John G. Todd, M.D.,
Appellant

v.

Misc
No. 81-00015

The United States of America

BEFORE: Wright and Ginsburg, Circuit Judges

ORDER

On consideration of appellant's petition for rehearing, filed May 7, 11981, it is

ORDERED by the Court that appellant's aforesaid petition for rehearing is denied.

Per Curiam

FOR THE COURT:

George A. Fisher,
Clerk

BY: /s/Robert A. Bonner
Chief Deputy Clerk

United States Court of Appeal
for the District of Columbia Circuit

FILED MAR 27 1981

GEORGE A. FISHER
CLERK

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 81-1199 **September Term, 1980**

John G. Todd, M.D.,
Appellant

v.

Misc
No. 81-00015

The United States of America

BEFORE: Robinson, Chief Judge, Wright, McGowan, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, Circuit Judges

ORDER

Appellant's suggestion for rehearing *en banc* has been circulated to the full Court and no judge of the Court has requested the taking of a vote thereon. On consideration of the foregoing, it is

ORDERED by the Court *en banc* that the aforesaid suggestion is denied.

Per Curiam

FOR THE COURT:

George A. Fisher,
Clerk

BY: /s/Robert A. Bonner
Chief Deputy Clerk

United States Court of Appeal
for the District of Columbia Circuit

FILED MAY 28 1981

GEORGE A. FISHER
CLERK

CERTIFICATE OF SERVICE

This is to certify that the foregoing Petition for Certiorari was mailed, postage prepaid, to the following, this ____ day of _____, 1981:

Attorney General
Office of the U.S. Attorney General
U.S. Department of Justice
Washington, D.C.

Office of the U.S. Attorney for
the District of Columbia
U.S. District Courthouse
Washington, D.C. 20001

CLEMENT THEODORE COOPER #2576
Attorney for Petitioner
918 F. Street, N.W. (300-302)
Washington, D.C. 20005

(202) 393-3900 / 393-3901